

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY TOTTEN, JOSE MORENO, in their) No. C-05-4307-SC
capacities as Trustees of the)
LABORERS HEALTH AND WELFARE TRUST) ORDER DENYING
FUND FOR NORTHERN CALIFORNIA;) DEFENDANT'S MOTIONS
LABORERS VACATION-HOLIDAY TRUST) UNDER FEDERAL RULE OF
FUND FOR NORTHERN CALIFORNIA;) CIVIL PROCEDURE 60(b)
LABORERS PENSION TRUST FUND FOR) TO VACATE ORDER
NORTHERN CALIFORNIA; and LABORERS) REGARDING MOTION FOR
TRAINING AND RETRAINING TRUST FUND) SUMMARY JUDGMENT AND
FOR NORTHERN CALIFORNIA,) TO VACATE ORDER
Plaintiffs,) REGARDING ATTORNEYS'
v.) FEES AND COSTS
ALEX PEGUES, individually; ROGER)
PITCHER, individually; ALEX PEGUES)
and ROGER PITCHER, individually and)
dba C&C MAINTENANCE SERVICE and C&C)
MAINTENANCE SERVICE,)
Defendants.)

I. INTRODUCTION

This matter comes before the Court on Defendant Alex Pegues' Motion to Vacate Order Regarding Motion for Summary Judgment Under Rule 60(b) and Motion to Vacate Order Regarding Attorneys' Fees and Cost[s] Under Rule 60(b). See Docket Nos. 64, 65. Plaintiffs filed an Opposition. See Docket No. 67. For the following reasons, Defendant's Motions are DENIED.

II. BACKGROUND

On October 24, 2005, Plaintiffs filed a petition to confirm an arbitration award. Docket No. 1. Plaintiffs subsequently

1 filed a First Amended Petition and a Second Amended Petition,
2 after which Defendants filed an Answer. See Docket Nos. 4, 9, 11.
3 On July 21, 2006, Plaintiffs filed a Motion for Summary Judgment.
4 Docket No. 31. On three separate occasions the Court granted
5 Defendant's extensions of time to file an Opposition to the Motion
6 for Summary Judgment. Docket Nos. 37, 39, 34. The third
7 extension, granted on November 3, 2006, was for 45 days and in it
8 the Court noted that no further extensions would be granted.
9 Defendant did not respond. The Court took the matter under
10 submission and granted Plaintiffs' Motion for Summary Judgment and
11 entered judgment in favor of Plaintiffs. Docket Nos. 48, 49.

12
13 **III. DISCUSSION**

14 Rule 60(b) provides that "a court may relieve a party . . .
15 from a final judgment . . . for . . . (1) mistake, inadvertence,
16 surprise, or excusable neglect . . . or (6) any other reason."
17 Fed. R. Civ. P. 60(b). Defendant argues that he should be granted
18 relief from summary judgment and from attorneys' fees and costs
19 because of excusable neglect. Specifically, Defendant argues that
20 because he was incarcerated, he is entitled to relief.

21 Defendant's period of incarceration, assuming, arguendo, that
22 the documents Defendant attached to his motions are authentic,
23 lasted from January 12, 2007 until August 17, 2007 and again from
24 December 3, 2007, until December 18, 2007. See Mot. Ex. A. Thus,
25 at the time Defendant was first incarcerated on January 12, the
26 Court had already taken the matter under submission and Defendant
27 was prohibited from filing any further briefing. In addition, on

1 December 5, 2006, Magistrate Judge Joseph Spero granted
2 Plaintiffs' Motion for Discovery Sanctions, thereby precluding
3 Defendant from presenting any further evidence that had not
4 already been disclosed to Plaintiffs. Docket No. 46.

5 In light of these facts, Defendant's incarceration, which did
6 not begin until January 12, 2007, could not have had any impact on
7 this Court's ruling on the Motion for Summary Judgment or on
8 Plaintiffs' request for fees. Although the judgment was not
9 issued until March 20, 2007, at the time Defendant was first
10 incarcerated, the third and final extension the Court had granted
11 had long since passed and the Court had taken the matter under
12 submission. Accordingly, Defendant's incarceration in this case
13 does not constitute excusable neglect and Defendant's Motions are
14 DENIED.

15
16 **IV. CONCLUSION**

17 For the reasons stated above, Defendant's Motion to Vacate
18 Order Regarding Motion for Summary Judgment Under Rule 60(b) and
19 Motion to Vacate Order Regarding Attorneys' Fees and Costs Under
20 Rule 60(b) are DENIED. Plaintiffs' request for fees and costs
21 associated with these Motions is also DENIED.

22
23 IT IS SO ORDERED.

24
25 Dated: March , 2008



26
27 UNITED STATES DISTRICT JUDGE